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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Philip Livingston and Friedhelm Helling
U.S. Serial No.: ✓08/477,097 Group Unit: 1645
Filed : ✓ June 7, 1995 Examiner: P. Duffy
For : ✓ GANGLIOSIDE-KLH CONJUGATE VACCINE PLUS QS-21

1185 Avenue of the Americas
New York, New York 10036
July 19, 2001

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

**COMMUNICATION REQUESTING CONSIDERATION ON
THE MERITS OF A FIRST SUBMISSION AFTER FINAL
REJECTION AND WITHDRAWAL OF FINALITY UNDER 37 C.F.R.
§1.129(a) AND PETITION FOR A FIVE MONTH EXTENSION OF TIME**

This Communication is submitted pursuant to the provisions of 37 C.F.R. §1.129(a) to request consideration on the merits of an Amendment in Response to June 19, 2000 Final Office Action as a First Submission and withdrawal of finality of the June 19, 2000 Office Action.

On June 19, 2000, the United States Patent and Trademark Office issued a Final Office Action in connection with the above-identified application. A response to the June 19, 2000 Final Office Action was originally due on September 19, 2000. An Amendment in Response to June 19, 2000 Final Office Action and Petition for a Three Month Extension of Time was filed on December 19, 2000. A Notice of Appeal was filed on December 19, 2000 and an appeal brief was due on February 19, 2001. Applicants hereby petition for a five-month extension of time. Applicants have previously established small-entity status. The fee for a five-month of extension of time for a small entity is \$945 and under 37 C.F.R. §1.17(r) the fee for filing a submission

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after final rejection is \$355. Applicants enclose a check in the amount of \$1300.00 to cover these fees. Accordingly, the subject application is pending. Therefore, the Amendment, attached hereto as Exhibit 1, is now due July 19, 2001 and is being timely filed.

Under 37 C.F.R. §1.129(a), applicants in an application that has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365 (c), are entitled to have a First Submission entered and considered on the merits after final rejection if the First Submission and the fee set forth in §1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application.

For its earliest priority date, the subject application claims priority of U.S. Serial No. 08/009,268, filed January 22, 1993. Therefore, taking into account this priority reference this application has been pending for at least two years as of June 8, 1995. This Communication is prior to the filing of an Appeal Brief and prior to abandonment of the subject application. Accordingly, the Amendment in Response to June 19, 2000 Final Office Action as a First Submission is being timely filed.

The fee under 37 C.F.R. §1.17(r) for consideration and entry of a first submission after a final rejection is \$355.00. As stated hereinabove, applicants enclose herewith a check which includes this fee.

Under 37 C.F.R. §1.129(a), the finality of the final rejection is automatically withdrawn upon the timely filing of the First Submission and the payment of the fee set forth in §1.17(r). Accordingly, applicants respectfully request that the finality

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of the June 19, 2000 Final Office Action be withdrawn and the Amendment in Response to June 19, 2000 Final Office Action as a First Submission be considered as the First Submission.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants's undersigned attorney invites the Examiner to telephone either of them at the number provided below.


No fee, other than the enclosed \$1300.00 fee, which includes the \$945.00 fee for a five month extension of time and the \$355.00 fee under 37 C.F.R. §1.17(r), is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

 7-19-01
John P. White Date
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